

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
WEST MISSOURI POWER COMPANY)

Appearances:

For Appellant : W. E. Baird, Certified Public
Accountant

For Respondent : W. M. Walsh, Assistant Franchise
Tax Commissioner; Crawford H.
Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner on the protest of the West Missouri Power Company to a proposed assessment of additional tax in the amount of \$2,717.46, the tax having been redetermined in the amount of \$911.76, for the taxable year 1941.

The Appellant, a Missouri Corporation, had its principal office in California at the beginning of the year 1940. It then owned securities which it held in California, owned and operated a hydroelectric dam in Missouri, owned and operated a citrus fruit ranch in California, and owned and rented two small pieces of real property in California. Until June 1 of that year its principal officers were in California and its business operations were directed from this State. At that time the Appellant sold the citrus fruit ranch to one of its officers and moved its principal office and bulk of its securities to Missouri. The officer remained in California and securities in California corporations or corporations operating in California and having a book value of \$329,875 were left in California from June 1, 1940, through the remainder of 1940 and 1941. Dividends on these securities were mailed to the Appellant at the office of the citrus fruit ranch and were deposited in a California bank account subject to check only by the corporate officials in Appellant's office in Missouri. During 1940 and 1941 the Appellant received rent from the two pieces of real property in California. In 1941 this property was operated by Appellant's officials from its offices in Missouri, producing a loss of \$29.59 in 1940 and a net income of \$60.82 in 1941.

For the income year 1940 the Appellant filed a return showing a loss and paid the minimum tax of \$25.00 for the taxable year 1941. The additional liability asserted by the Commissioner for that year in the amount of \$911.76 was measured by net income in 1940 of \$23,418.88, consisting of the following: (1) income

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from the two tracts of real estate, (2) income to June 1, 1940, from all the securities owned by the Appellant and located in California until that date, and (3) income from the operation and the sale of the ranch. It may be noted that the Commissioner did not include the income from the securities retained in California from June 1, 1940 to the end of that year in the measure of the tax for 1941.

The Appellant questions whether it should be held to have been doing business in California in 1941, but contends that even if it did then do business here its securities did not have a taxable situs in this State in 1940, or at least after June 1, 1940. It further contends that it is improper to measure its tax liability for 1941 by the 1940 income from the operation and sale of its ranch when its only activity in California in 1941 was the receipt and deposit of income from the securities remaining in California and the ownership and rental of two relatively small properties having no connection with the ranch. No authorities are cited by Appellant in support of these contentions;

Section 5 of the Bank and Corporation Franchise Tax Act defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." In view of Appellant's operation of the two rental properties, we would not be warranted in overruling the Commissioner in this regard for the ownership and renting of real property in this State has been held by the California Supreme Court to constitute "doing business" here within the purview of Section 5. Golden State Theatre and Realty Corporation v. Johnson, 21 Cal. 2d 493.

We are unable to agree with the Appellant's position concerning the measure of its tax liability. Section 4(3) of the Act provides that a corporation shall pay an annual franchise tax "according to or measured by its net income, to be computed ... at the rate of 4 per centum upon the basis of its net income for the next preceding fiscal or calendar year." Section 7 defines net income as gross income less the deductions allowed. Gross income is defined in Section 6 and the allowable deductions therefrom are set forth in Section 8. None of these Sections contains any exclusion, exemption or deduction for income derived from property which is sold or removed from the State during the income year. The instant situation is comparable to that presented in Spring Valley Company, Ltd. v. Johnson, 7 Cal. App. 2d 258. The corporation there involved had sold all its operating assets and retired from active business operations during the income year but continued to hold and administer its nonoperative assets and suffered a net loss thereon in the taxable year for which the franchise tax was assessed. The court nevertheless held that it was constitutionally proper to base the franchise tax for the taxable year on the income of the next preceding year. It follows, accordingly, that the Commissioner correctly included the items of 1940 income under consideration in the measure of Appellant's tax for 1941.

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O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25 of the Bank and Corporation Franchise Tax Act, that the action of Chas, J. McColgan, Franchise Tax Commissioner, on the protest of West Missouri Power Company to a proposed assessment of additional tax in the amount of \$2,717.46, the tax having been redetermined in the amount of \$911.76, for the taxable year 1941 be and the same is hereby. sustained.

Done at Sacramento, California, this 17th day of August, 1949, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
J. L. Seawell, Member

ATTEST: Dixwell I., Pierce, Secretary